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SUBJECT: CROATIAN ICJ STRATEGY AFTER BIH VERDICT

REF: 06 ZAGREB 366

1. (SBU) SUMMARY AND COMMENT: While the Croatian media reacted with outrage to the recent International Court of Justice (ICJ) ruling finding Serbia not responsible for genocide in BiH, official GoC reaction has been decidedly measured. While still waiting for the ICJ to accept its own genocide case against Serbia, the GoC is carefully studying its options in what seems to have become a no-win issue for Croatian leaders. Top legal experts believe an out-of-court settlement may be the best way to achieve Croatia's goals, but politicians cannot afford talk of withdrawing the case in the run-up to what is likely to be a tightly contested parliamentary election in November. The GoC's most likely course of action is to quietly continue with case preparations while not so secretly hoping the ICJ will delay a decision on accepting the case until after the elections.
END SUMMARY AND COMMENT.

BiH VERDICT MIXED INDICATOR FOR CROATIAN CASE

2. (U) Professor Ivan Simonovic, deputy dean of the Zagreb law faculty and Croatia's agent before the ICJ, stressed to reporters that the BiH verdict did not absolve Serbia, but rather held it responsible for not preventing genocide and for failing to punish the perpetrators. This will carry far-reaching political repercussions for Serbia. In addition, the ICJ's acceptance of jurisdiction over the BiH case is a good sign for Zagreb, as the ICJ denied jurisdiction when Croatia first submitted a case against Serbia in 1999.

3. (SBU) International law expert Ivo Josipovic, a Member of Parliament and one of Simonovic's fellow professors at the law faculty, told PolOff March 2 that he was not optimistic about Croatia's case against Serbia. He predicted the ICJ would again deny jurisdiction or refuse the case on its merits, as the court held to a very narrow definition of genocide in the BiH verdict.

4. (SBU) Josipovic pointed out that the GoC had a better chance of convincing the ICJ of direct linkages between Belgrade and crimes committed within Croatia, a key point BiH lawyers failed to prove. While BiH relied extensively on international experts and other secondary evidence, according to Josipovic, Croatia's case is based on primary source documents showing direct communication between Serbia and Serb forces in Croatia.

POLITICS PREVENTS CASE WITHDRAWAL

15. (SBU) While both Simonovic and Josipovic see an out-of-court settlement as the most likely avenue to any reparations for Croatia, election year politics prevent the GoC from publicly considering withdrawing its case against Serbia. The BiH verdict has already given fodder to parties on Croatia's far right, and withdrawing the GoC's case would be political suicide for the ruling party, Josipovic said. The best the GoC can hope for now, according to Josipovic, is a delay in the ICJ's decision on jurisdiction until after November elections.

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